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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,447	12/30/2003	Raymond Liberatore	12,799	4968

7590 06/14/2006

Mr. William W. Haefliger  
Suite 512  
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EXAMINER

WALCZAK, DAVID J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

### Period for Reply

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1) ☒ Responsive to communication(s) filed on 09 May 2006.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

4) ☒ Claim(s) 1-6, 16, 29, 31 and 45-74 is/are pending in the application.  
4a) Of the above claim(s) 16, 29, 31, 47, 51, 53, 56-60, 64-68 and 71 is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-6, 45, 46, 48-50, 52, 54, 55, 61-63, 69, 70 and 72-74 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

9) ☒ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 8/29/05 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All    b) ☐ Some \* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- Part of Paper No./Mail Date 20060611

## **DETAILED ACTION**

### ***Response to Amendment***

It is initially noted that amended claim 58, which is now a new independent claim, will not be examined herein in that this claim is not directed to elected Species I, i.e., the “protective structure” defined therein has not been disclosed in the specification as being present on elected Species I and appears to be present in non-elected Species IV (Figures 19, 19a).

### ***Abstract***

The new abstract of the disclosure filed 5/09/06 is objected to because an abstract must commence on a sheet that does include any other verbiage. Correction is required. As discussed in the previous office action, the Applicant should see MPEP § 608.01(b) for information on how to properly present an abstract.

### ***Drawings***

The drawings remain objected to because, as discussed in the previous office action, reference character 32a (see the paragraph beginning on line 3 of page 12) is not present in the drawings. Further, in Figure 2, reference character 15 is directed to the width of the surface 21 and not the width of the layer 13, as the specification indicates on page 11, lines 5-8). Lastly, Figure 2 contains leader lines that do not have a reference character attached thereto.

The drawings are further objected to since newly presented reference character 110a' (see the amendment to the paragraph starting on line 21 of page 13) is not present in any of the drawings.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities: In the paragraph beginning on line 21 of page 13, "110a" should be --110b--. Currently, reference character 110b (Figure 19) is not present in the specification. It is noted that

the previous office action indicated that reference character 11a (in the same paragraph) should be changed to 110b, however, the Applicant incorrectly changed 11a to 110a, as opposed to 110b. Further, also as indicated in the previous office action, reference character 601 (Figure 26) is not present in the specification. Appropriate correction is required.

It is lastly noted that reference character 87 was present in Figure 8 in the drawings filed 8/29/05 but has been removed via the drawing amendment filed 5/9/06

The amendment filed 5/9/06 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The newly added recitation of the ends of the opening remaining of fixed dimensions is considered to be new matter. The original specification did not indicate whether or not the ends of the opening remain fixed or can be flexed. Further, as the blade 17 is disclosed as being flexible (see lines 8-9 and 15-16 of page 11), it appears that the ends of the opening would not remain of fixed dimension but would flex with the blade.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Rejections - 35 USC § 112***

Claim 73 remains rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to

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one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The limitation that the nozzle side wall is everywhere forwardly configured toward the end opening to define forward continuity is considered to be new matter in that this limitation is broader than the structure originally disclosed in the specification and drawings. It is noted that this rejection was made in the previous office action, but was not addressed by the Applicant.

Claims 1-6, 45, 46, 48-50, 52, 54, 55, 61-63, 69, 70 and 72-74 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. These claims also contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. As discussed supra, the newly presented limitation of the opposite ends of the opening remain of fixed dimension is considered to be new matter.

Claim 73 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As discussed in the previous office action in regard to claim 73, the recitation of a "spreader" (line 3) is indefinite in that the Applicant has already referred to the device as a dispenser (2), i.e., it appears that the term "spreader" is intended to define the entire device, as does the term "dispenser". Further, the specification defines the term "spreader" in two different ways (see the first paragraph on page 11), that is, as the entire device 10 and the blade 17, however, the claims seem to also use this term to

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define both structures, which renders the claim language confusing. In the interest of clarity, it appears that on line 3, "a spreader having" should be deleted and on line 17, "the spreader" should be --the dispenser--, i.e., such an amendment would craft the claims such that the blade 17 would be referred to in the claims as "the spreader" and the entire device would be referred to as "the dispenser".

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 45, 46, 52, 63, 72 and 73 remain, as best understood, rejected under 35 U.S.C. 102(b) as being anticipated by Woods. In regard to claims 1 and 73, Woods discloses a dispenser comprised of an elongated container 1 filled with material and a nozzle 3 projecting from an end wall of the container and comprised of a sidewall that terminates in a furthest forward end opening 6 (see Figure 5) wherein the opening has height dimension that remains "substantially the same" throughout and a width dimension substantially exceeding twice the height (see Figure 6). Further, the ends of the opening include arcuate and concave surfaces at widthwise opposite ends (viewing Figure 6, the ends of the opening have arcuate and concave surfaces at both the top and bottom of the slit) which "remain of fixed dimension", i.e, upon a constant pressure being applied to the container 1, the slit 6 will "remain of fixed dimension" (As the

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Applicant has not defined "remain of fixed dimension" in the specification, the Examiner is given wide latitude in interpreting this limitation). The sidewall further includes a surface which is capable of spreading the material and has an outer surface that is everywhere forwardly convergent toward the opening to define a forward taper as it approaches the opening wherein a substantially constant height layer is dispensed through the nozzle as the container is pressurized such that the layer has the width of the end opening and the forward taper acts to terminally narrow the nozzle and configure it for ease of wide spreading the dispensed layer in relation to narrowed layer thickness. It is noted that statements of intended use, i.e., the labeling of the dispenser as an "edible material mass progressive dispenser", does not lend any patentable structure to the claims. Further, the Woods reference is capable of dispensing an edible mass should a user so choose to employ the device. In regard to claims 2 and 3, the spreader surface (area 8, for example) is in the form of a blade and attached to the dispenser proximate the nozzle. In regard to claim 4, blade is flexible (see column 1, line 7). In regard to claim 5, the nozzle is carried by the dispenser and edible material (toothpaste is considered an edible material, see column 1, line 1) is in the dispenser and is able to be spread by the spreading surface. In regard to claim 6, the nozzle is flexible (see column 1, line 7). In regard to claims 45 and 45, the nozzle is threadedly attached to the dispenser (see Figure 3). In regard to claim 52, the nozzle and spreader surface are "configured and positioned to maximize the visibility" of the dispensed material. In regard to claim 63, since the nozzle is made from flexible material, when the nozzle is used to dispense material onto a curved surface, the spreader surface will



form a curvature that will conform to the curved surface. It is again noted that statements of intended use, i.e., "to conform to an edible" curved surface do not lend any patentable structure to the claims. In regard to claim 71, the nozzle has the shape of a spatula. In regard to claim 72, the mass layer is spread as a wide layer.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 61, 62, 69, 70 and 74 are, as best understood, rejected under 35 U.S.C. 103(a) as being unpatentable over Woods in view of Hertz. Although the Woods device does not include a cap over the nozzle, attention is directed to the Hertz reference, which discloses an analogous dispenser wherein a cap 39 which engages the nozzle (see Figure 8) and which has an interior cavity "generally in the shape of the nozzle" and a configuration "to conform to the nozzle and the opening" is placed over the nozzle in order to enable the nozzle to be covered when not in use. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made that such a cover can be employed onto the Woods device (and engaged to the device in any suitable, well-known manner, including a snap-ring engagement) in order to enable the nozzle in the Wood device to be covered when not in use.

Claims 48, 49, 54 and 55 are, as best understood, rejected under 35 U.S.C. 103(a) as being unpatentable over Woods in view of Knapp. Although the Woods device does not include a serrated edge thereon, attention is directed to the Knapp reference, which discloses another dispenser wherein a serrated edge is formed thereon in order to enable the product to be better spread. Accordingly, since both the Woods and Knapp references do not limit the type of spreadable material that can be dispensed therefrom, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include such a serrated edge onto the Woods device in order to enable a user to better spread the material.

Claim 50 is, as best understood, rejected under 35 U.S.C. 103(a) as being unpatentable over Woods. Although the opening in the Woods device is not undulated, it is the Examiner's position that the opening in the Woods device can be of any suitable shape, depending on the needs of the user, without effecting the overall operation of the device.

### ***Response to Arguments***

Applicant's arguments filed 5/9/06 have been fully considered but they are not persuasive. The Applicant contends that the Woods reference is no longer applicable as it does not disclose the claimed structure. As discussed in detail above, however, the Wood device discloses the structure as claimed.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

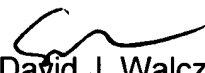
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
6/11/06